

BEFORE THE
POLLUTION CONTROL HEARINGS BOARD
STATE OF WASHINGTON

IN THE MATTER OF
EDWARD ESTER,

Appellant,

vs.

PUGET SOUND AIR POLLUTION
CONTROL AGENCY,

Respondent.

PCHB No. 148

FINDINGS OF FACT,
CONCLUSIONS AND ORDER

This matter is the appeal of a \$25 civil penalty for an alleged violation of respondent's Regulation I.

This matter came before all members of the Pollution Control Hearings Board as a formal hearing in the Board's conference room in Olympia, Washington at 3:45 p.m. on October 3, 1972.

Appellant appeared. Respondent appeared through its counsel, Keith D. McGoffin. Irene Dahlgren, court reporter, record the proceedings.

Witnesses were sworn and testified. Exhibits were offered and

1 admitted.

2 On the basis of testimony heard and exhibits examined, the Pollution
3 Control Hearings Board prepared Proposed Findings of Fact, Conclusions
4 and Order which were submitted to the appellant and respondent on
5 November 13, 1972. No objections or exceptions to the Proposed Findings,
6 Conclusions and Order having been received, the Pollution Control
7 Hearings Board makes and enters the following:

8 FINDINGS OF FACT

9 I.

10 On June 7, 1972, the boiler stack at the Olympian Apartments,
11 1605 E. Madison Street, Seattle, King County, emitted black smoke for
12 more than three minutes of a Ringelmann Chart reading in excess of
13 No. 2. On May 12, 1972, a similar excessive reading was noted by
14 respondent.

15 II.

16 No civil penalty was invoked for the May 12, 1972 citation, but
17 a \$25.00 civil penalty was imposed in connection with the June 7, 1972
18 emission.

19 III.

20 Appellant operates eight apartment houses in the City of Seattle;
21 has evidenced a clear desire to abide by air pollution regulations, and
22 over a long period of operating his eight apartment houses, has incurred
23 only the two citations mentioned above, both within the period of one
24 month.

25 IV.

26 Neither appellant nor his apartment house manager caused the smoke
27 emissions. There is evidence indicating that unknown, unauthorized
FINDINGS OF FACT,

1 persons entered the apartment house's boiler room and deliberately
2 tampered with the mechanism causing the smoke emissions. The boiler
3 room was not locked against intruders in compliance by appellant with a
4 request from the Seattle Fire Department to keep boiler rooms open during
5 the time of their operation.

6 From these Findings, the Pollution Control Hearings Board makes these

7 CONCLUSIONS

8 I.

9 Appellant's boiler stack at the Olympian Apartments was in
10 technical violation of respondent's Regulation I on June 7, 1972 and,
11 because of a previous citation on May 12, 1972, respondent acted
12 properly in invoking a nominal penalty of \$25.00.

13 II.

14 However, the Pollution Control Hearings Board, holding admiration
15 for appellant's obvious sincere and vigorous attempts to comply with
16 air pollution control standards, feels that through no fault of his, an
17 unauthorized person or persons deliberately broke into the boiler room
18 and caused the emissions. We do not feel, therefore, that appellant
19 should be subjected to any civil penalty in this matter.

20 THEREFORE, the Pollution Control Hearings Board makes this

21 ORDER

22 Respondent's Notice of Violation No. 6217 is sustained, but
23 respondent's Notice of Civil Penalty No. 296 in the amount of \$25.00 is
24 remanded to respondent for cancellation.

1 DONE at Olympia, Washington this 27th day of December, 1972.

2 POLLUTION CONTROL HEARINGS BOARD

3 Walt Woodward
4 WALT WOODWARD, Chairman

5 James T. Sheehy
6 JAMES T. SHEEHY, Member

7 Matthew W. Hill
8 MATTHEW W. HILL, Member

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26 FINDINGS OF FACT,
27 CONCLUSIONS AND ORDER